

MAR 27 2009

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RANDY AARON HALL,

Petitioner - Appellant,

v.

CHERYL PLILER,

Respondent - Appellee.

No. 04-17336

D.C. No. CV-03-05208-DLB

MEMORANDUM^{*}

Appeal from the United States District Court
for the Eastern District of California
Dennis L. Beck, Magistrate Judge, Presiding^{**}

Submitted March 18, 2009^{***}

Before: LEAVY, HAWKINS and TASHIMA, Circuit Judges.

California state prisoner Randy Aaron Hall appeals from the district court's judgment dismissing his 28 U.S.C. § 2254 petition, challenging his conviction for

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The parties consented to the jurisdiction of the magistrate judge.

^{***} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

committing a lewd act on a child. We have jurisdiction pursuant to 28 U.S.C. §§ 1291 and 2253, and we affirm.

Hall contends that the jury instructions that allowed consideration of prior acts of sexual misconduct to show propensity violated his rights by lessening the burden of proof. We conclude that the state court's decision rejecting this claim was not contrary to, or an unreasonable application of, clearly established federal law, as determined by the United States Supreme Court. *See* 28 U.S.C. § 2254(d); *see also Estelle v. McGuire*, 502 U.S. 62, 71-75 (1991); *Alberni v. McDaniel*, 458 F.3d 860, 863-67 (9th Cir. 2006); *Gibson v. Ortiz*, 387 F.3d 812, 822 (9th Cir. 2004).

AFFIRMED.